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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,962	12/10/2003	Aimin Sang	03002	6806

7590 02/12/2007  
Jeffery J. Brosemer  
138 S. Telegraph Hill Road  
Holmdel, NJ 07733

EXAMINER
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ODOM, CURTIS B

ART UNIT	PAPER NUMBER
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2611

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/731,962	<b>Applicant(s)</b> SANG ET AL.	
	<b>Examiner</b> Curtis B. Odom	<b>Art Unit</b> 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7, 8 and 13 is/are rejected.
- 7) ☒ Claim(s) 3-6 and 9-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. MPEP 2173.05(b) [R-5] states:

**A claim may be rendered indefinite by reference to an object that is variable. For example, the Board has held that a limitation in a claim to a bicycle that recited "said front and rear wheels so spaced as to give a wheelbase that is between 58 percent and 75 percent of the height of the rider that the bicycle was designed for" was indefinite because the relationship of parts was not based on any known standard for sizing a bicycle to a rider, but on a rider of unspecified build. Ex parte Brummer, 12 USPQ2d 1653 (Bd. Pat. App. & Inter. 1989). On the other hand, a claim limitation specifying that a certain part of a pediatric wheelchair be "so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats" was held to be definite. Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986). The court stated that the phrase "so dimensioned" is as accurate as the subject matter permits, noting that the patent law does not require that all possible lengths corresponding to the spaces in hundreds of different automobiles be listed in the patent, let**

**alone that they be listed in the claims.**

Claims 7 and 8 have been rendered indefinite because the variables R and K (see claim 7) and the variable F (see claim 8) have not been defined.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Wu et al. (US 2003/0007889).

Regarding claim 1, Wu et al. discloses a method of determining which users, from a plurality of two users (as described in section 0013), access to a communications system is to be provided, such access being provided to the plurality of two users over a plurality of sub-band channels (see section 0008), the method comprising the steps of:

determining, for each of plurality of channels and for each of the plurality of users, a channel measurement feedback characteristic represented by  $R_k$  which are transmission rates of the users on the channels (see section 0020);

determining, for each of the plurality of channels and for each of the plurality of users, a past throughput characteristic represented by  $T_k$  which is an average throughput for the user  $k$  (see section 0024) ;

and determining, a user to be provided access according to the following relationship as shown in section 0023, wherein the optimization equation is equivalent to the equation recited in claim 1 as follows:

$R_{k0}$  and  $R_{k1}$  are equivalent to  $r_k(t)$  (both represent the measurement feedbacks of user  $k$ ),  
 $T_{k0}$  and  $T_{k1}$  are equivalent to  $r_k(t)$  (both represent the average (mean) throughput of user  $k$ ),

$W_{k0}$  and  $W_{k1}$  are equivalent to  $w_k$  (both represent weights applied to the users, as shown in section 0023).

$\beta$  is equivalent to  $\alpha$  (both represent parameters used to control (tune) fairness, see section 0024),

$k$  is equivalent to  $k^*$  (both represent the users).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (US 2003/0007889) as applied to claim 1, and in further view of Elliot et al. (U. S. Patent No. 2005/0063389).

Regarding claims 2 and 13, Wu et al. discloses the tuning parameter  $\beta$  controls fairness for scheduling (see section 0024), but does not disclose adjusting the tuning parameter as a result of determined throughput and determined fairness or adjusting the tuning parameter in real time.

However Elliot et al. discloses adjusting a tuning parameter to control the average throughput and fairness of scheduling (see sections 0004 and 0015) between a number of users. Fairness is determined by QoS specifications (see section 0014) and throughput is determined as an average throughput of multiple users (stations), see section 0004. The tuning parameter is adjusted in real-time (see section 0018). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to adjust the tuning parameter in Wu et al. as disclosed by Elliot et al. since Elliot et al. states the tuning can balance fairness and throughput (see section 0004).

***Allowable Subject Matter***

7. Claims 3-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (and above 112 rejections are overcome).

*Conclusion*

8. Jain et al. (US 2005/0169301) discloses using a tuning (fairness) factor to control fairness based on throughput. Damnjanovic (U. S. Patent No. 6, 917, 812) and Stolyar (U. S. Patent No. 2004/0266451) both disclose scheduling functions for a plurality of users.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis B. Odom whose telephone number is 571-272-3046. The examiner can normally be reached on Monday- Friday, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Curtis Odom

February 2, 2007

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